

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PATRICK O. FRANKLIN, SR,

CV F 05 525 OWW LJO P

Plaintiff,

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND (Doc. 1.)

v.

ORDER DIRECTING CLERK OF COURT TO
SEND BLANK CIVIL RIGHTS FORM

CCI, Unit 1, Ortiz, et. al.,

Defendants.

Patrick O. Franklin ("Plaintiff"), an inmate currently incarcerated at California Correctional Institution ("CCI") at Tehachapi, California, is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on April 20, 2005.

A. SCREENING STANDARD

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a

claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), *citing* Conley v. Gibson, 355 U.S. 41, 45-46 (1957); *see also* Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

B. SUMMARY OF COMPLAINT

Plaintiff states that his right to medical care, due process, freedom of association and cruel and unusual punishment have been violated because Mr. Ortiz took Plaintiff out of the Doctors office when the Doctor was not finished with his care.

C. CLAIMS FOR RELIEF

1. Linkage Requirement

The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under section 1983, the plaintiff must link each

1 named defendant with some affirmative act or omission that demonstrates a violation of
2 plaintiff's federal rights.

3 The Court notes further that Plaintiff names CCI and the Medical Unit as Defendants.
4 However, CCI and the "Medical Unit" are not persons within the meaning of Section 1983 and
5 thus, they are not proper Defendants.

6 ***2. Eighth Amendment***

7 "The Eighth Amendment's proscription against cruel and unusual treatment is violated
8 when officials remain deliberately indifferent to the serious medical needs of convicted
9 prisoners." Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir.1996) (*citing* Estelle v. Gamble, 429
10 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). A prisoner's claim of inadequate medical
11 care does not constitute cruel and unusual punishment unless the mistreatment rises to the level
12 of "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106
13 (1976).

14 The "deliberate indifference" standard involves an objective and a subjective prong.
15 First, the alleged deprivation must be, in objective terms, "sufficiently serious." Farmer v.
16 Brennan, 511 U.S. 825, 834 (1994) (*citing* Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second,
17 the prison official must act with a "sufficiently culpable state of mind," which entails more than
18 mere negligence, but less than conduct undertaken for the very purpose of causing harm. Farmer
19 v. Brennan, 511 U.S. at 837. A prison official does not act in a deliberately indifferent manner
20 unless the official "knows of and disregards an excessive risk to inmate health or safety." Id.

21 In applying this standard, the Ninth Circuit has held that before it can be said that a
22 prisoner's civil rights have been abridged, "the indifference to his medical needs must be
23 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this
24 cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), *citing*
25 Estelle, 429 U.S. at 105-06. "[A] complaint that a physician has been negligent in diagnosing or
26 treating a medical condition does not state a valid claim of medical mistreatment under the
27 Eighth Amendment. Medical malpractice does not become a constitutional violation merely
28 because the victim is a prisoner." Estelle v. Gamble, 429 U.S. at 106; *see also* Anderson v.

County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin v. Smith, 974 F.2d 1050, 1050 (9th Cir. 1992), *overruled on other grounds*, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (*en banc*). Even gross negligence is insufficient to establish deliberate indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

Plaintiff does not allege sufficient facts to state a cognizable claim against Defendant Ortiz.

3. Exhibits and Evidence

It is inappropriate to attach exhibits to a complaint. See Rule 8, Federal Rules of Civil Procedure. Further, the Court cannot serve as a repository for the parties' evidence. Originals or copies of evidence (i.e., prison or medical records, witness affidavits, etc.) should not be submitted until the course of litigation brings the evidence into question (for example, on a motion for summary judgment, at trial, or when requested by the court). At this point, the submission of evidence is premature as the Plaintiff is only required to state a prima facie claim for relief. Accordingly, should Plaintiff amend his Complaint, he should refrain from submitting exhibits and/or evidence.

D. CONCLUSION

The Court finds that Plaintiff's complaint does not contain any claims upon which relief can be granted under § 1983 against any of the Defendants. The Court will provide Plaintiff with time to file an Amended Complaint curing the deficiencies identified above should he wish to do so.

Plaintiff must demonstrate in the Amended Complaint how the conditions complained of resulted in a deprivation of his constitutional rights. See, Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The Amended Complaint must specifically state how each Defendant is involved. Further, there can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423, U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

1 Finally, Plaintiff is advised that Local Rule 15-220 requires that an Amended Complaint
2 be complete in itself without reference to any prior pleading. As a general rule, an Amended
3 Complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
4 1967). Once an Amended Complaint is filed, the original Complaint no longer serves any
5 function in the case. Therefore, in an Amended Complaint, as in an original Complaint, each
6 claim and the involvement of each defendant must be sufficiently alleged. The Amended
7 Complaint should be clearly and boldly titled "AMENDED COMPLAINT," reference the
8 appropriate case number, and be an original signed under penalty of perjury.

9 **E. ORDER**

10 The Court HEREBY ORDERS:

- 11 1. The Clerk of Court is DIRECTED to SEND Plaintiff a blank civil rights
12 complaint form;
- 13 2. The Complaint is DISMISSED with leave to amend. WITHIN THIRTY (30) days
14 from the date of service of this order, Plaintiff SHALL:
 - 15 a. File an Amended Complaint curing the deficiencies identified by the Court
16 in this Order, or
 - 17 b. Notify the Court in writing that he does not wish to file an Amended
18 Complaint and pursue the action but instead wishes to voluntarily dismiss
19 the case.

20 Plaintiff is forewarned that his failure to comply with this Order may result in a
21 Recommendation that the Complaint be dismissed pursuant to Local Rule 11-110.
22 IT IS SO ORDERED.

23 **Dated: October 2, 2006**
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/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE